

## **802 KAR 1:010. Hearing procedures.**

RELATES TO: KRS Chapter 13B, 131.340, 131.355, 131.365, 131.370, 133.130(10)

STATUTORY AUTHORITY: KRS 13B.170, 131.340(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes the Kentucky Board of Tax Appeals to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B to establish procedures for appeals to the Kentucky Board of Tax Appeals. This administrative regulation supplements the provisions of KRS 131.310 through 131.370, 133.120(10) and Chapter 13B.

Section 1. Definition. "Board" means Kentucky Board of Tax Appeals.

Section 2. Formal Administrative Hearings. In accordance with KRS 131.340 and Chapter 13B, an aggrieved party may petition the board for a formal hearing in accordance with KRS Chapter 13B.

(1) A petition shall:

(a) Be in writing;

(b) Be signed by the petitioner;

(c) Be styled "Petition of Appeal";

(d) Be filed in person or mailed by certified mail, return receipt requested, to the Kentucky Board of Tax Appeals and received by the board within thirty (30) days of the date of issuance of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal; and

(e) Contain a statement of all relevant issues of fact and law.

(2) Filing by facsimile or other electronic means shall not be accepted.

(3) The appealing party shall file:

(a) An original and four (4) copies of the Petition of Appeal; and

(b) Five (5) copies of the county board of assessment's final ruling, order, or determination.

(3) If a party who appeals fails to comply with any part of subsections (1), (2), (3), or (4) of this section, the board or the hearing officer may:

(a) Dismiss the appeal for failure to comply; or

(b) If the appeal is timely filed, notify the appealing party of deficiencies and allow the appealing party fifteen (15) days to amend the petition.

(5) Upon receiving a Petition of Appeal, the Kentucky Board of Tax Appeals shall provide notice to the appellee that a Petition of Appeal has been filed. The appellee or his attorney shall file an entry of appearance within thirty (30) days of the date of the notice.

Section 3. Representation in Proceedings Before the Board. (1) If the appeal is by an individual, the individual whose tax liability is at issue shall appear and represent himself or herself or engage legal counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.

(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in Section 3(1) of this administrative regulation, the entity shall be represented by an attorney on all matters before the board, including the filing of the Petition of Appeal.

(4) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

Section 4. Discovery. (1) Discovery may be obtained without prior order of the board or hearing officer pursuant to Kentucky Rules of Civil Procedure 30, 31, 33, 34, and 36, as amended.

(2) The board or hearing officer may deny, limit, or require discovery.

(3) Sanctions. If a party fails to obey an order regarding discovery, the board or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing; or

(c) Appeal be dismissed or relief be granted as requested by the opposing party.

(4) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by an order of the board or hearing officer.

Section 5. Subpoenas. Upon good cause shown, the board or hearing officer shall issue a subpoena to any party upon request, provided that the request for subpoena shall be received by the board or hearing officer at least sixty (60) days prior to the hearing.

Section 6. Prehearing Filings. At least thirty (30) days prior to the hearing, a party shall file with the board or hearing officer the following:

(1) An original and four (4) copies of a prehearing summary that contains the following:

(a) A summary of the party's position on any issue of fact in dispute;

(b) A summary of the party's position on any issue of law raised by the appeal;

(c) A written statement of facts to which the party agrees and any facts which a party does not dispute;

(d) A list of the names, addresses, and phone numbers (if known) of all witnesses which the party expects to call to testify as a witness at the hearing; and

(e) A copy of all exhibits which the party intends to introduce at the hearing;

(2) Proposed findings of fact and conclusions of law; and

(3) A proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

Section 7. Briefs. (1) A party shall file with the board or hearing officer any brief required by order of the board or hearing officer. If the board or hearing officer has not issued an order pertaining to briefs, then a party may file an original and four (4) copies of a brief.

(2) The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed, to assist in adjudicating the hearing

(3) A brief shall be typewritten or hand printed. A photocopy shall be accepted. A copy of a brief shall be clearly legible and double spaced, except for quotations, on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point. A brief shall include a copy of any legal authority relied upon in the brief, unless this requirement is specifically waived by the board or hearing officer.

Section 8. Motions, Responsive Pleadings, and Time Computation. (1) A party shall file an original and four (4) copies of all pleadings or motions with the board or hearing officer.

(2) Any other party affected by a motion or pleading may file an original and four (4) copies of a response to the motion or pleading within fifteen (15) days from the date on which the motion or pleading was originally served upon all parties to the appeal.

(3) A moving party may file an original and four (4) copies of a reply to another party's response

within fifteen (15) days from the date the response was served. No other replies or responses shall be filed, unless prior approval is granted by the board or hearing officer.

Section 9. Notice of Motions and Pleadings. Any party who files a motion or pleading shall serve all other parties to the appeal a copy of the motion or pleading. A motion or pleading shall be accompanied by a certification that a copy has been served on each interested party.

Section 10. Summary Disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or a part of the proceeding, in which event the following procedure shall apply.

(1) The moving party shall assert that there are no disputed material facts as to one or more of the issues before the board or hearing officer. The moving party shall include in its motion a statement specifying which material facts are undisputed. A material undisputed fact may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the original petition or appeal, as well as any documents or exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee.

(2) The moving party shall state that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation. The moving party shall submit a copy of any legal authority which supports the moving party's position on any legal issue before the board or hearing officer.

(3) Within twenty (20) days after a party moves for summary disposition and complies with the requirements set forth in Section 9 of this administrative regulation, any other party may submit to the board or hearing officer:

(a) An acknowledgment that there are no disputed material facts or any affidavit or response to discovery that shows the material facts to be in dispute; and

(b) All legal authorities which support the opposing party's position on any legal issue.

(4) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion, shall result in the board or hearing officer assuming there are no factual issues before it to be considered in deciding the legal issues. If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(5) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 11. Time. KRS 446.030 shall apply to computation of time under this administrative regulation. (KTA-1; 1 Ky.R. 47; eff. 10-2-1974; Am. 3 Ky.R. 398; eff. 12-1-76; 4 Ky.R. 456; eff. 7-5-78; 12 Ky.R. 1760; eff. 6-10-86; 25 Ky.R. 434; 880; 26 Ky.R. 612; eff. 8-26-99; 2202; 3217; 4164; eff. 7-6-2007; TAm eff. 9-27-2016.)